

Smith, Steve

From: Smith, Steve
Sent: Thursday, December 11, 2008 4:29 PM
To: 'Hurst, Annette'
Cc: Avalos, Julio; Walker, William; Gray, Thomas
Subject: RE: Discovery Meet and Confer

Annette:

I am really confused. We have never agreed to produce, either in our responses to the discovery or during our meet and confer communications, documents "evidencing the development, operation and maintenance of the web sites." Indeed, Facebook did not even propound a request for such documents. Bill and I went back and looked at our notes, and could not find any such discussion let alone agreement on this issue. I have also checked my previous correspondence and do not see it there either.

On the contrary, in response to Interrogatory Nos. 15 and 16, which ask us to identify the people responsible for the design, programming and maintenance of the websites, our notes and memories reflect that we agreed to give you the names of the heads of any departments that would have been involved, which I have now given you orally in our December 3rd telephone call and then again via email on December 4th. We also agreed to provide you with an organizational chart and amended interrogatory response, which we will shortly do.

The document request that uses the word "formation," which is also the word I used in my letter, is RFP No. 17, which on its face clearly relates to corporate formation, not website development, design and/or maintenance. What we agreed to produce was "corporate formation documents."

So, again, I do not understand. Most obviously, I did not agree and would not have agreed to produce a category of documents you did not even request.

Finally, I did not "agree" that the witnesses listed in my December 4th email (or on the telephone on December 3rd), which included Dariani and Bemmann among others, were "relevant." I simply agreed to provide you with those identities as a compromise as part of the meet and confer. I also said that I would not oppose any effort by Facebook to obtain process (under the Hague Evidence Convention or letters rogatory, etc.) for Dariani and Bemmann if that was necessary. But I have always reserved my right to argue about relevance, because the question remains -- relevant to what? I think the record is very clear that you and I are and have been disagreeing about that.

Sincerely,

Steve

From: Hurst, Annette [mailto:ahurst@orrick.com]
Sent: Thursday, December 11, 2008 1:09 PM
To: Smith, Steve
Cc: Avalos, Julio; Walker, William; Gray, Thomas
Subject: RE: Discovery Meet and Confer

Steve:

Thank you for your response. My comments regarding agreement to produce Dariani and Bemman's files pertain to your agreement that they are relevant witnesses, and also your agreement both in document responses and in

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our discussions that documents evidencing the development, operation and maintenance of the web sites would be produced. We just want to be certain that we get the entirety of these files, since it is clear that these witnesses were the initial developers. So please confirm that their files will be produced in response to the outstanding requests and pursuant to our discussions.

We will get back to you on other issues. In the meantime, when can we expect defendants to supplement their interrogatory responses and begin production of the agreed-upon documents?

Sincerely yours,
Annette Hurst

From: Smith, Steve [mailto:ssmith@ggfirm.com]
Sent: Thursday, December 11, 2008 12:06 PM
To: Hurst, Annette
Cc: Avalos, Julio; Walker, William
Subject: RE: Discovery Meet and Confer

Annette:

First, Mr. Weber and Mr. Brehm will be at your offices in Frankfurt on January 12 and 13 respectively as you request. Thank you for agreeing to do it in your offices.

Second, the answers to your 3 questions about the 12 terabytes of data are as follows:

1. The 12 terabytes came from every single employee of the company in the following groups: (a) Members of the Geschäftsführung and the Management Team, (b) the Product/Engineering Group, (c) the Marketing Department and (d) the Sales department. It also includes the head of Customer Service and the head of HR, who is also the CFO. But it does not include Legal or lower-level employees in Customer Service or HR.
2. All documents of any and every kind, including without limitation all database files, e-mail files, documents from Microsoft programs such as Word, Excel, Power Point, Project and Editor, PDF files, text files, JPEGs and other graphic files.
3. The sources were every place that might contain potentially relevant data, including again without limit the central file servers, exchanges mailboxes, local hard drives on desktops and laptops and removable media devices.

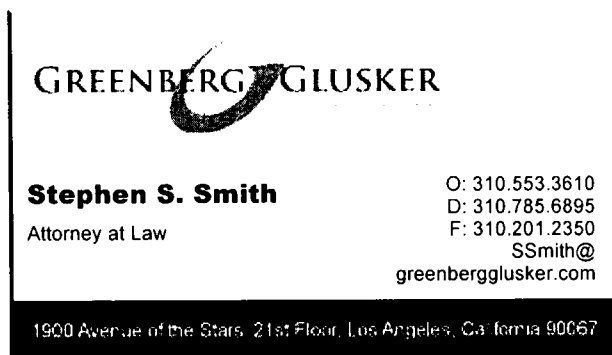
Third, we are not able to produce Dariani or Bemmann for deposition. We have no ability to compel their attendance. If you want to depose them, you will need to serve them with process under whatever law you need to. Dariani has not performed any services for StudiVZ since long before the lawsuit was filed. Bemmann has not performed any services for StudiVZ since just before the lawsuit was filed.

Fourth, I do not know what you are talking about in terms of Dariani and Bemmann's documents concerning the development of the website. My letter to you last week did not agree to produce any such documents, so I do not understand what you mean by "per the representation of your prior letter." If the issue is preservation, any such documents that were in StudiVZ's possession, custody or control when Facebook filed suit are preserved. But I have not agreed to produce any such documents. You may be misunderstanding the term "StudiVZ formation" documents. As we discussed on the calls preceding my letter, those documents are corporate formation documents, not website development documents.

Sincerely,

Steve Smith

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From: Hurst, Annette [mailto:ahurst@orrick.com]
Sent: Monday, December 08, 2008 4:16 PM
To: Smith, Steve
Cc: Avalos, Julio; Walker, William
Subject: Discovery Meet and Confer

Steve:

Amongst other threads of our discussion, we have asked what documents have been collected comprising the "12 terabytes" of data to which you have referred in prior conversations. In particular, this will confirm that we would like to know the following about those documents for purposes of our meet and confer:

1. From which custodians were the documents collected?
2. What types of documents are they (e.g., CRM database, data files, e-mail, etc.)?
3. What were the sources of the documents (e.g., networked central file servers, exchange mailboxes, local hard drives, etc.)?

Of course, we could notice a 30b6 deposition for this purpose, but we will accept your representations in lieu of such a deposition if we can get sufficiently detailed information to conduct an appropriate meet and confer.

In addition, in connection with our ongoing meet and confer, we would like you to confirm that StudiVZ will produce the files of Ehssan Dariani and Dennis Bemann concerning the development of the initial site published at www.studivz.net and all other sites upon which they worked subsequently thereto as defined in the document requests. In particular, though we understand that StudiVZ is refusing to produce source code, we nonetheless expect that it will produce Dariani and Bemann e-mails, chat transcripts and other documents concerning the

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development of the sites. Please confirm that this is correct and that, per the representation of your prior letter, these documents will be produced by the end of December.

Additionally, it is our understanding that both Dariani and Bemmann remain employees (and, in Bemmann's case, an officer) of StudiVZ to this date. Although they may have individual representation, it remains our view that StudiVZ is obligated to produce them for deposition. Accordingly, we hereby confirm your offer to take the depositions of Messrs. Brehm and Weber during the week of January 12 in our conference rooms in Frankfurt, and notify you that we intend to notice Messrs. Dariani and Bemman for that week as well. We will service notices of deposition accordingly in the next few days.

Sincerely yours,
Annette Hurst



O R R I C K

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Smith, Steve

From: Smith, Steve
Sent: Thursday, December 04, 2008 11:31 AM
To: 'Hurst, Annette'
Subject: RE: German Depos

O.K.

Michael Brehm -- COO.

Dennis Bemmman -- CTO.

Essan Dhariani -- founder.

Marcus Reicke -- CEO.

Jan Wergin -- CPO with the P standing for product

Arash Yalpani -- head of development

Customer service, CFO, Legal and HR I understand you do not care about, but tell me if I am wrong.

All of these people (other perhaps than Dhariani, for whom I do not know) are "citizens" for jurisdiction purposes of Germany and are residents of Germany, but I need to check on actual political citizenship to confirm.

I hope you do not need their personal residence addresses and that I can give you the office address? If not, I have to check on that because the German privacy law issue.

The StudiVZ office address is
studiVZ Ltd.
Saarbruecker Strasse 38
10405 Berlin
Germany

On Weber, I need to check to see what his business address is.

Steve

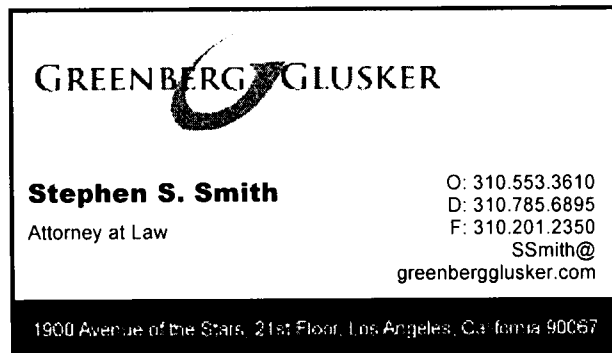
From: Hurst, Annette [mailto:ahurst@orrick.com]
Sent: Thursday, December 04, 2008 11:01 AM
To: Smith, Steve
Subject: RE: German Depos

Just listened to it after I sent you this. Can you send me a document with the names and titles we discussed yesterday so I can figure out what we need to do here and call you back?

From: Smith, Steve [mailto:ssmith@ggfirm.com]
Sent: Thursday, December 04, 2008 10:58 AM
To: Hurst, Annette
Subject: RE: German Depos

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Did you get my voicemail?



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From: Hurst, Annette [mailto:ahurst@orrick.com]
Sent: Thursday, December 04, 2008 10:56 AM
To: Smith, Steve
Cc: Avalos, Julio; Gray, Thomas; Chatterjee, I. Neel
Subject: German Depos

Steve:

I've attached a memo that we received from the US consulate in Germany about taking depositions. Additionally, they have informed us that January is no longer available and we are now looking at February. Unfortunately, there is a bit of a chicken and egg problem because we can't negotiate dates with them until we provide them with notices. So we are going to go ahead and serve notices with dates, but please understand that we are doing this on the assumption that we will ultimately engage in a three-way negotiation with the consulate that produces dates acceptable to both sides.

Additionally, as you will see from the attached memo, we need the addresses and country of citizenship for each of the witnesses to be included in the deposition notice in order for the consulate to do its work with the German government. Accordingly, I would appreciate it if you would provide me with that information for each of the people we discussed yesterday as soon as possible, so we can get out notices and start negotiating with the consulate. We are almost certainly not going to notice them all, but I need to keep the ball rolling on this in the meantime.

Please do not hesitate to call me if you have any concerns or questions.

2/10/2009

Annette



O R R I C K

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